

**Draft Revised (b)(2) Decision – Comments and Responses**  
**May 9, 2003**

Comment	Response
<b>State Agencies</b>	
<b>1. Mary D. Nichols, Secretary for Resources</b>	
<p>1a. Some proposed changes are clearly not required by the March 2002 U.S. District Court ruling. Eliminate those elements not required by the court ruling – e.g., Shortage Criteria.</p>	<p>Interior considered eliminating those elements not required by the March 2002 court ruling, such as the shortage criteria, and implementing the previous shortage criteria. However, Interior has decided to proceed with several changes based on experience gained in implementing the CVPIA. The shortage criteria in the Revised Decision is within the Secretary’s discretion as provided by the CVPIA. Interior decided to leave the shortage criteria as it is in the draft Revised Decision.</p>
<p>1b. The October 1999 policy is part of the regulatory baseline in the CALFED ROD – the new policy would have an effect on: (1) California’s ability to protect threatened and endangered species; (2) providing reliable urban and agriculture water supplies putting contractors’ water supply reliability at risk; and (3) place a greater burden on EWA.</p> <p>Provide additional tools to address the shortfall in the regulatory baseline – e.g., re-operation.</p>	<p>Interior recognizes that the October 1999 Decision on (b)(2) implementation was included in the regulatory baseline described in the CALFED ROD. However, it is unclear that the Revised Decision will necessarily affect the State’s ability to protect species, provide water supply reliability and place a greater burden on EWA. Interior is committed to working with its State and federal partners through the CALFED process to ensure that the Revised Decision does not adversely impact the CALFED Program goals. In an effort to provide additional time to coordinate the EWA and other CALFED ROD activities with the Revised Decision on (b)(2), Interior has decided to finalize the Decision at this time but to postpone implementation of the Decision until the 2004 water year</p> <p>Interior has included provisions to allow for modifications of CVP operations, or re-operation, as provided for in CVPIA Section 3406(b)(1).</p>

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1c. Project and Management agencies would be hard pressed to maintain regulatory commitments for operation of the SWP and CVP.	Project and Management Agencies will need to continue careful management of those assets described in the 3 Tiers of the CALFED ROD. The agencies are being assisted in that effort with increased monitoring data provided by various programs and by information presented through the CALFED Science Program. Interior is committed to working with the other CALFED Agencies to maintain the regulatory commitments provided for in the CALFED ROD.
1d. California was not consulted during the development of the new policy. It is critical for the Federal government to work closely with California to address this change in the regulatory baseline.	<p>The State members of the Water Operations Management Team (WOMT) were provided copies of the Draft decision prior to its release on December 18, 2002. However, in order to provide additional time to coordinate the Revised Decision with other ongoing water operations activities, Interior has decided to postpone implementation of the Decision until the 2004 water year.</p> <p>Interior will work with the State of California, the CALFED Agencies and WOMT to ensure that the Revised Decision is coordinated with the CALFED process and the changes in the regulatory baseline are addressed as quickly as possible.</p>
1e. Interior should work with State of California and stakeholders to address the change in the regulatory baseline to prevent a return to pre-Bay Delta Accord conflict.	As noted above, Interior is committed to working with both the State of California and stakeholders through the CALFED process and other operational forums.
2. Thomas M. Hannigan, Director, Department of Water Resources, and Robert C. Hight, Director, Department of Fish and Game	
2a. Revisions of the interpretation will affect the State's ability to balance its water supply and resource protection needs.	See 1b. above.
2b. Revisions affect both the existing assumptions regarding the level of water available for environmentally protective actions and the concomitant regulatory commitments that are based upon the ability to take those actions.	See 1c. above. Interior supports implementing environmentally protective actions as provided in the CVPIA and the CALFED ROD.
<p>2c. Section II. – Language is unclear whether (b)(2) water could be required to meet Vernalis standards.</p> <p>Suggestion: articulate accounting for use of (b)(2) water to meet flow standards and to meet salinity standards, and how accounting differs for each.</p>	The Vernalis salinity standards were required prior to CVPIA by the SWRCB in D-1422. Therefore, it is included in the base case and not accounted for as a (b)(2) fish action. Interior's preliminary analysis indicates the salinity standards required by

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	<p>the WQCP (D-1641) are generally consistent with D-1422.</p> <p>The Vernalis flow standard required by the WQCP (D-1641) is a fish and wildlife objective established after CVPIA. Consequently, any additional CVP releases to meet this objective are accounted for as a (b)(2) fish action.</p>
<p>2d. Section II.A. – Supports an October – Sept accounting period and supports the 200k acre-feet target for use in the October – January period.</p>	<p>Interior agrees and selected the October-September accounting period because it is consistent with the life cycle of most of the salmon and steelhead that spawn in Central Valley rivers, contributes to meeting the Anadromous Fish Restoration Program (AFRP) doubling goals, and promotes the efficient use of the 800,000 AF for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes authorized by the CVPIA.</p> <p>Interior believes that using up to 200,000 acre feet of (b)(2) water during the October – January period is a reasonable way to deal with unknown WQCP costs in the spring and summer, while still reserving flexibility to augment fishery needs in the fall and early winter.</p>
<p>2e. Section II.B. – Suggested text edits (italic addition and strikeout).  Footnote 4: “....<i>As set forth in water rights draft decision 1641,</i><del>At this time</del> the CVP and State Water Project are responsible for meeting the flow related objectives contained in the 1995 Delta WQCP.”  Last sentence following Footnote 4 annotation, suggest including the following: “Similarly, Interior will account for the costs of meeting the CVP’s ESA obligations after enactment of CVPIA against <i>the annual</i> (b)(2) <i>allocation remaining at the time cost is incurred.</i>”</p>	<p>Interior has modified this sentence to read “The CVP and the State Water Project are responsible for meeting the flow related objectives in the 1995 Delta WQCP.”</p> <p>Interior has modified sentence consistent with comment.</p>
<p>2f. Section II.B.1.b. – Interior’s draft decision to pursue an incremental increase in Delta outflow for fishery purposes should be supported by the best available science.</p>	<p>Interior agrees and will work with the CALFED agencies on determining when upstream releases should flow through the Delta. Interior will also coordinate with the CALFED Science Program on the best available science and communicate information to the stakeholders.</p>
<p>2g. Section II.B.1.b. – With regard to Interior not specifying that a release is</p>	<p>Interior recognizes that releases not needed for Delta outflow</p>

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needed for Delta outflow. Note that such a release may also be available for export by the SWP and/or the EWA as set forth in the 1986 COA for the SWP and CVP and the 08/28/00 EWA Operating Principles Agreement.	may be subject to other operational arrangements, such as the COA or the EWA Operating Principles Agreement. The Revised Decision has been modified to reflect the COA and EWA Operating Principles.
<p>2h. Section II.B.2. – The explanation for the accounting methodology is confusing, the point of reference for measuring export increases or reductions is unclear.</p> <p>Suggestion: “Action designated to affect conditions in the Delta that entail <i>increased</i> releases from upstream reservoirs <del>and that do not reduce exports</del> will be accounted using the upstream metric. <i>Other</i> fish and wildlife actions upstream that do cause exports to be reduced will be accounted using <del>this</del> <i>the</i> export metric.”</p>	The Revised Decision has been modified to consistent with the comment.
2i. Section II.C. – Encourage Interior to use the (b)(2) Interagency Team as a forum for development of streamlined accounting methods. It is critical that the accounting of (b)(2) uses be rigorous and transparent and that efforts at streamlining the process do not result in it becoming obscure and inaccessible.	Interior agrees and will continue to work with the (b)(2) Interagency Team and the CALFED agencies on streamlined accounting methods that are rigorous, transparent, and accountable. Interior will continue to maintain a web site that summarizes (b)(2) operations to date, as well as the current month’s CVP forecast of operations.
<p>2j. Section III. – Make it clear that CVPIA 3406(b)(1) can be used for fishery habitat improvements beyond just flow augmentations and that CVP reservoirs can be used to temporarily regulate or store water if the regulated or stored water is for fish and wildlife purposes. Per the CALFED ROD and EWA Operating Principles, EWA can store water in CVP facilities provided it does not adversely affect CVP operations and no additional costs are incurred.</p> <p>Suggestion: “Interior may modify CVP operations in accordance with CVPIA Section 3406(b)(1) to provide additional flows, <i>improve river temperatures, regulation or storage of flows</i> or export curtailments for fish and wildlife purposes.”</p> <p>Develop a more comprehensive list of operations changes that could be implemented under Section 3406(b)(1).</p>	<p>Revisions to reflect CVPIA 3406 (b)(1) have been incorporated in the Revised Decision. Protocols will be developed to address use of project facilities for storage or conveyance of non-project water.</p> <p>Interior will work with the CALFED agencies to develop a better understanding of potential modifications to operations and provide examples to stakeholders. Because most modifications will involve unique operational and environmental conditions, Interior will not list such modifications in the Revised Decision.</p>
2k. Section IV.A. – Does not distinguish between reservoirs upstream of the	Interior intends that these types of issues would be addressed

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Delta vs. reservoirs downstream of Delta export facilities (e.g., San Luis Reservoir). Water banking at each type of reservoir should be discussed.	through a Banking Policy that will be developed with the input of the State, CALFED agencies, and other interested parties.
<p>2l. Section V. – Requires clarification; the baseline would be represented by the simulated CVP operations.</p> <p>Recommend: “These costs will be accounted as the increase in releases and decrease in exports, compared to releases and exports that would have resulted from simulated CVP operations during the same period <del>compared to the baseline</del>.”</p> <p>Also, make it clear that Interior will account for water costs up to the balance of (b)(2) water remaining at the time the costs are incurred.</p>	<p>Comments noted. Revisions have been incorporated in the Revised Decision. . . “from simulated CVP baseline operations during the same period.”</p> <p>Interior will account for (b)(2) costs at the time the costs are incurred, up to the annual limit of 800,000 acre-feet.</p>
<p>2m. Section V. – The Shortage Criteria was not challenged in Federal court. The modification will increase the number of years where less than 800,000 af of (b)(2) is available, thus constraining the fish benefits that can be provided in years when they are likely to be needed most. The criterion is not clear as to when the shortage will be established. If shortages are determined with the proposed method early in the year, unnecessary pressure may be put upon fishery agencies to curtail the fish protection actions they might otherwise take during the October-Dec period.</p> <p>Recommend: Any formal shortage to (b)(2) be established on the same schedule as CVP North-of-Delta agricultural contractors and provide all agencies/parties involved in CVP/SWP operations with information for assessing the risk of taking various actions throughout the year, a range of exceedance hydrologies to be used to develop operation plans.</p>	<p>See 1a. above</p> <p>The Revised Decision has been clarified to indicate that formal shortages to (b)(2) will be established on the same schedule as CVP north of Delta agricultural contractors, beginning in February. The 200,000 acre-feet will be available for use in the October through January period as needed to implement fish protection actions. In addition, Interior will communicate information regarding operation plans, shortages and risks of taking actions with CALFED agencies’ staff and stakeholders.</p>
3. Richard A. Denton, OFF Designated Chair, CALFED Operations and Fish Forum	
3a. Minutes of OFF Stakeholder discussions.	Comments noted.
<b>Federal Agencies</b>	
4. Karen Schwinn, Associate Director, Water Management Division, USEPA	
4a. Both the NEPA evaluation for the CALFED PEIS and the programmatic BO were developed with the explicit assumption that CVPIA implementation, including (b)(2), would proceed as outlined in the August 2000 ROD, in addition, ESA commitments for water supply reliability were explicitly	Interior agrees that implementation of (b)(2) as outlined in the August, 2000 ROD was an assumption in the Programmatic BOs, and that implementation of (b)(2) as described in the ROD was part of the regulatory baseline in Tier1. See 4c. below

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conditions on a particular interpretation of 3406(b)(2).	addressing the CALFED PEIS/EIR. Regarding ESA commitments, the EWA agencies reassess ESA commitments on an annual basis. The ability to issue ESA commitments is not a guarantee, nor is it directly related to the amount of (b)(2) assets available. It is dependent on hydrology, the monitoring and distribution of listed species, and the availability of a broad set of tools and/or resources in that particular year.
4b. What is the current status of the Aug 2000 BO?	Interior believes that the August 2000 BOs, along with the operational opinions on which the August 2000 Programmatic BOs are based, are still valid.
4c. Does the change in the baseline require any supplemental environmental analysis?	The CALFED PEIS/EIR modeled (b)(2) as the use of 800,000 af dedicated for environmental purposes between two bookends. Interior believes the Revised Decision is within those bookends that were modeled and analyzed in the CALFED PEIS/EIR and therefore no supplemental analysis is required.
4d. Give that the baseline would change, what is the status of the ESA Commitments that were integral to the CALFED ROD? Is there a proposal for making up the environmental water being redirected?	The commitments are in place for this year as they were for 2001 and 2002. The EWA and project flexibility may be used to accomplish fish actions that may have otherwise been considered (b)(2) actions under the 1999 Decision. Use of EWA in this manner must be by mutual consent of all the EWA agencies. See 1d. above.
4e. To the extent that the BA would be revised, what is the scientific basis of the revised biological analyses? Any revised BA used to justify revisions needs to be publicly reviewed in the forum of the CALFED Bay Delta Program's Science Program.	As noted above, Interior is not planning on revising the Programmatic BA. Reclamation and DWR are developing a revised BA for the Operations Criteria and Plan (OCAP). The CALFED Agencies, in coordination with the CALFED Science Program are planning a Science Symposium in June, 2003 to discuss issues associated with the OCAP consultation.
4f. Interior appears to be revising the definition of baseline, independent of any court mandate, which would result in (b)(2) water being "shorted" about 1/3 of the time, instead of the current policy's 1/10 of the time with a shortage that can range up to 200,000 af in critically dry years and 100k af in dry years.	See 1a. above. Interior does not agree that the change in the shortage criteria will result in shortages in one-third of the years, as EPA suggests. Even though dry or critically dry years occur approximately one in three years, North of Delta water service

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	contractors are not shorted in every dry or critically dry year. However, Interior recognizes that this shortage criteria is changed from shortage criteria in the October, 1999 Decision, which was included in the CALFED ROD as part of the regulatory baseline.
4g. The effect of making a baseline change appears to be to reduce the amount of (b)(2) water available for active water management resulting in other water sources, primarily the EWA (which relies on taxpayer-financed State and Federal expenditures), to make up the difference. Concern that Interior has not completely evaluated the potential strains on water management that will reduce the availability of (b)(2) water and increase reliance on EWA.	See 1b., 1d. above.
4h. In the past Interior has worked closely with other State and Federal agencies, concerned that Interior's draft decision to develop such a major proposal on it's own, without other State and Federal agency partners, is a step backwards.	See 1b., 1d. above.
4i. Regarding Service's ability to conclude the need for upstream (b)(2) releases. Carefully consider information being developed through the CALFED Science Program about the reliance of salmon migrations on Delta flow conditions. Science suggests that the "default" assumption is that salmon do need the flows through the Delta. Revise the policy to require that upstream releases be maintained as flows through the Delta unless the Service makes a written finding, based on a BA, that such flows are unnecessary.	Interior will carefully consider information being developed through the CALFED Science Program. However, Interior disagrees that the Revised Decision needs to be modified. The Revised Decision provides Interior the ability to designate that an upstream (b)(2) release be allowed to flow out the Delta, when fisheries conditions warrant extra outflow. Consistent with the EWA Operating Principles, the Revised Decision also provides the flexibility to export (b)(2) water in the Delta and make part of it available as an EWA asset in San Luis Reservoir. See 2f., 2g. above.
<b>5. James D. Keselburg, Regional Manager, WAPA</b>	
5a. The draft decision is outside of the range of alternatives that were evaluated by the CVPIA PEIS, as a result, Western is not able to evaluate potential impacts on CVP power.	Interior disagrees. The CVPIA PEIS evaluated the power impacts of (b)(2) implementation over a range of alternatives. The Revised Decision does not change the annual amount of (b)(2) water or the fundamental way in which it is used. The Revised Decision modifies the accounting methodology and revises the shortage criteria. However, the power impacts of (b)(2) implementation remain within the range of alternatives

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	described in the CVPIA PEIS.
5b. Section II.A. – The accounting period should be March through February.	Interior disagrees. The October-September accounting period was selected because it is consistent with the life cycle of most of the salmon and steelhead that spawn in Central Valley rivers, contributes to meeting the Anadromous Fish Restoration Program (AFRP) doubling goals, and promotes the efficient use of the 800,000 AF for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes authorized by the CVPIA. See 2d. above.
5c. Section II.B. – Clarify if Interior will be accounting for and making projections of WQCP costs separately to ensure that no discretionary (b)(2) actions will cause the use of (b)(2) to exceed annual allocation.	Interior will be accounting and making projections for WQCP, ESA, and other uses of (b)(2) water in an effort to effectively use the available annual (b)(2) assets while planning to not exceed the quantity available. Interior will continue to make projections of WQCP costs in the in the monthly forecast process. However, Interior will not account for WQCP costs separate from overall (b)(2) accounting costs.
5d. Section II.B.1.a. – If costs are determined by daily increases in releases, then why is the term “accumulated over the period” used? Unless the increases in daily releases are accounted for at the individual facilities, this would allow for “offset” which would be inconsistent with Wanger’s order.	The term “accumulated over the period” is simply meant to insure that upstream releases are properly accounted for within a given water year. Under the District Court ruling, “offset” is no longer allowed, and the text in this section is not intended to infer that “offset” accounting will take place.
5e. Section II.B.1.b. – Transfer of banked water would be coordinated to ensure the greatest instream benefit. It is not clear under which “applicable provisions of Section IV” accounting for this water would occur.	The applicable provisions would be determined by the nature of the action. Interior plans to develop a policy for banking and transfer/exchanges that will provide clarification of the provisions.
5f. Section B.2.a. – The sentence “Fish and Wildlife actions upstream that do cause exports to be reduced will be accounted for under this metric.” seems to conflict with the discussion in Section II.B.1.b. which states that “Upstream releases specified to flow through the Delta would be accounted for solely under this provision, and not as Delta Actions.” What sorts of fish and wildlife actions upstream would result in a reduction of exports?	The text is intended to account for (b)(2) actions and assign (b)(2) costs appropriately. One example of an upstream fish action that could cause an export reduction would be as follows: Interior reduces releases from an upstream reservoir in order to preserve cold water for use later in the year for fish protection. In the event that CVP exports are reduced due to the upstream



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	<p>reduction, then (b)(2) would be debited in the export metric. Increase upstream releases specified to flow through the Delta that do not cause export reductions relative to the CVP baseline operation will be accounted for using the upstream metric. See 2h. above.</p>
<p>5g. Section II.C. – How does Interior plan to meet monthly and annual accounting deadlines? On what day of the month is Service’s schedule due to Reclamation?</p>	<p>Initial daily accounting will be developed by the 15<sup>th</sup> day of every month showing the current account balance for that accounting year as of the end of the previous month. A final accounting of the amount of (b)(2) water used for actions during the October-January period will be completed by March 25 of each year. Final accounting for all (b)(2) actions during the February-September period will be calculated by November 15. Reclamation and the Service will work on monthly operations forecasts with the goal of having the forecasts completed by mid-month. The Service will participate in review of daily accounting prepared by Reclamation staff and make decisions for use of (b)(2) water. Based on the current and projected (b)(2) accounting and the most current monthly forecast, the Service will update the fishery actions for inclusion in the next monthly forecast. The forecasts will be updated monthly.</p>
<p>5h. Section II.C. – The (b)(2) accounting process should outline the mechanisms for ensuring that reclassification of actions between (b)(2) and EWA does not occur. Concern that reclassification of (b)(2) actions as (b)(1) actions could occur after the fact as has been the case with (b)(2) and EWA actions.</p>	<p>Interior will continue to utilize and account for (b)(2) assets separately from EWA assets as well as changes in the CVP due to (b)(1) reoperations. Interior will utilize reoperation when conditions meet those described in Section III and both the Service and Reclamation agree. To the extent possible, the classification of these actions will occur prior to the action taking place. Interior believes that the separation between (b)(2) and EWA will continue to improve at CVP facilities. Interior anticipates that EWA actions will be identified in advance and accounted for successfully in 2003 and beyond. See 2i. above.</p>
<p>5i. Section III. – CVPIA defines the term Central Valley Project to mean Federal reclamation projects. Thus, balancing of Shasta and Folsom to meet</p>	<p>Reoperation between facilities is a standard CVP practice, which allows the Project to maximize the use of CVP water to meet</p>

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Delta water quality requirements would be considered a “re-operation” since Spring Creek and Keswick are bypassed. This “bypass” would “conflict with fulfillment of the Secretary’s contractual obligations to provide CVP water for other authorized purposes.”	regulatory requirements. Under the Revised Decision, Interior will extend the use of reoperation to activities which benefit the environment, consistent with CVPIA, where and when such reoperations do not conflict with the fulfillment of the Secretary’s remaining contractual obligations to provide CVP water for other authorized purposes.
5j. Section III. – Shifting exports from Tracy to Banks would not be a “re-operation” since Banks is not a Federal reclamation project. The shift from project use energy from Tracy to Banks is also a shift in the timing of the use of the energy, resulting in a major impact to CVP hydropower production.	The COA recognizes the use of Banks Pumping Plant by the CVP as does D-1641. Interior agrees that shifts in timing of exports can have major impacts to CVP hydropower production and will have to consider that factor in determining whether it is appropriate to modify CVP operations.
5k. Section III. –Unanticipated impacts should be mitigated. This decision should directly state Interior’s policy regarding reclassification. Reclassification of (b)(2) actions as (b)(1) after the fact might cause redirected impacts to project beneficiaries.	See 5h., 5i. above.
5l. Section IV. – Hydropower production is one of CVP’s authorized purposes. Making banking, transfer, and/or exchanges of (b)(2) water possible without impacting normal project obligations will be very challenging. Western looks forward to participation in upcoming discussion for defining banking, transfer, and/or exchange of (b)(2) water.	Interior will welcome participation by Western in developing a banking policy. See 2k. above. Interior agrees that hydropower production is one of the CVP’s many authorized purposes, which include river regulation, improvement of navigation, and flood control; irrigation, domestic uses and fish and wildlife mitigation, protection and restoration purposes; and power and fish and wildlife enhancement.
5m. Section V. – The last sentence implies that (b)(2) water use could exceed 800,000 af in a given year. Reasonable projection of WQCP costs is needed to ensure that discretionary (b)(2) actions are not taken when there isn’t sufficient (b)(2) water to meet the WQCP.	See 5c. above. The Revised Decision implements the Congressional directive to dedicate and manage annually the 800,000 acre feet. Interior will be using operations plans in an effort to meet WQCP obligations and post-October 1992 ESA requirements with available (b)(2) water. Model studies have indicated that in a few years in the historical record, those obligations and requirements may exceed the amount of (b)(2) water available.
5n. Section VI. – Since allocation to water contractors is March 1 through February 28, does this mean that despite hydrologic conditions, (b)(2) allocation will be uncut from October through February? When will Interior	Interior may use up to 200,000 acre-feet of (b)(2) water in the October through January period. How much will actually be used is dependent on fishery needs, but hydrologic and reservoir

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make its determination of shortage to (b)(2) allocation?	storage conditions will be considered. Interior will use the February 40-30-30 Index and the north of Delta CVP agricultural water service contractor allocation based on the 90% exceedance forecast for the initial determination of whether (b)(2) shortage provisions will apply in that water year. If subsequent indices in March, April, or May indicate wetter conditions, Interior will relax (b)(2) shortages accordingly. See 2m. above.
<b>Water Contractors</b>	
6. Jon D. Rubin, Attorneys for San Luis & Delta-Mendota Water Authority	
6a. Recognize and incorporate into the final decision principles that allow for implementation of section 3406(b)(2) in a balanced manner, while recognizing the 800,000 af limitation and the flexibility inherent in the authorized (b)(2) uses.	See 6h.-6j., below. .
6b. Change the accounting period for (b)(2) water and/or eliminate the 200,000 af up front dedication.	See 2d., 5b. above, 8g. below.
6c. Eliminate the water banking and transfer/exchange program or revise the existing description to make clear how Interior intends to use the program to fulfill the purposes of the CVPIA.	As stated in the Revised Decision, Interior intends to develop a banking policy at some point in the future. That policy will provide clarity on banking and transfer/exchanges. See 2k. above.
6d. Revise the description of section 3406(b)(1) to explain in detail how Interior intends to respect the limitation in 3406(b)(1), which precludes any action that will conflict in any way with fulfillment of the Secretary's remaining obligations to CVP contractors.	Interior will implement any modifications of CVP operations (re-operation) consistent with Section 3406 (b)(1) to ensure that they do not conflict with fulfillment of the Secretary's remaining contractual obligations to provide CVP water for other authorized purposes. As re-operation is implemented it will be coordinated with CALFED agencies and communicated with the stakeholders.
6e. Include a limitation on the actions taken in Delta and commit to using other resources, including EWA, to minimize adverse impacts to south of Delta contractors.	Interior has incorporated the 640,000 acre foot limitation on actions in the Delta that was included in the October 5, 1999 Decision in the Revised Decision. See section II. In the CALFED ROD, Interior and the other CALFED Agencies committed to implementing actions, including EWA and Joint

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	Point of Diversion, as well as other water augmentation tools, which are intended to increase deliveries to CVP agricultural contractors south of the Delta.
6f. Employ a shortage criterion based on allocations to south of Delta contractors and impose shortages for (b)(2) uses when allocations to south of Delta contractors fall below 70%.	Interior considered changing the shortage criteria based on allocations to south of Delta contractors. Because the allocations to north of Delta CVP agricultural water service contractors are more clearly determined by hydrologic circumstances, Interior decided to leave the shortage criteria as it is in the Draft Revised Decision. See 1a.,2m. above.
6g. Ensure that any fish protection and habitat restoration action is supported by the best available scientific data.	The rationale and scientific basis for improved flows and export reductions are found in a variety of sources (including AFRP documents, published literature, CDFG reports, and other restoration programs) and are generally based on results of instream flow and temperature studies conducted by the Service, CDFG, or others, as well as relationships between flow and adult returns, correlation analyses, and other life history information. As new information becomes available, Interior will incorporate it into decisions for (b)(2) actions.
6h. Need for Balanced Approach – The final decision must implement section 3406(b)(2) in a manner that equitably allocates adverse impact among all CVP contractors and reflect the commitments made in the Accord, which prohibits any action taken for fish or wildlife that was not contemplated unless the Service makes a finding that the action is supported by the best available scientific data. The draft decision is not consistent with the commitments made by Interior as part of the CALFED Bay-Delta Program.	Interior believes that the implementation of (b)(2) as described in the Revised Decision meets the goals of Congress set forth in CVPIA, including achieving a reasonable balance among competing demands for use of CVP water, including the requirements of fish and wildlife, agricultural, municipal and industrial, and power contractors. (CVPIA section 3402(f)). Interior disagrees that the Revised Decision is inconsistent with the Accord or the commitments made by Interior as part of the CALFED ROD.
6i. Need to Recognize 800,000 af Limitation – The final should expressly provide that the CVPIA limits Interior to the annual dedication and management of up to 800,000 af of CVP water for (b)(2) uses, and thus Interior will not implement (b)(2) in a manner that could cause it to exceed that limitation.	The Revised Decision implements the Congressional directive to dedicate and manage annually the 800,000 acre feet. See 5m. above.

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6j. Need to Recognize Inherent Flexibility of Authorized (b)(2) Uses – The final should recognize that, although section 3406(b)(2) water is to be used for water quality control plan and post-1992 ESA requirements, water dedicated and managed for those uses also promotes fish, wildlife and habitat restoration; other authorized uses for (b)(2) water.	Interior recognizes that water used to meet the WQCP and post-1992 ESA requirements may also benefit fish, wildlife and habitat restoration goals. However, only meeting the WQCP and post-1992 ESA requirements may not be sufficient to meet the anadromous fish doubling goal and other restoration purposes and measures included in CVPIA.
6k. The October to September accounting period diminishes CVP operational flexibility and creates a likelihood that Interior will exceed its 800,000 af limit in some years. This creates a substantial risk that Interior will give more than 800,000 af for purposes that must be counted toward yield dedication and managed under section 3406(b)(2), without any real benefit to fish restoration.	Interior disagrees. See 2d., 5b., 5m. above, 8g. below.
6l. During October through January Interior cannot accurately forecast CVP demand at which time operations are not reasonably certain because the factors needed to forecast operations cannot be adequately determined.	Interior recognizes the uncertainty of hydrology while recognizing the importance of fishery actions in this period. The 200,000 acre-foot target for use in this period provides for these needs while ensuring that sufficient (b)(2) water is maintained throughout the accounting period.
6m. By commencing the accounting period in October and taking (b)(2) actions during the October through January period, as opposed to a period when operational forecasts could be made with less risk, Interior must make conservative assumptions about precipitation during the coming season.	Interior believes that the accounting period, in combination with the 200 TAF target for (b)(2) usage during the October – January period, is a reasonable way to deal with unknown hydrology. See 2d., 5b., 5n. above, 8g. below.
6n. The constraint on operations that will likely be realized if (b)(2) is implemented with the October through September accounting period is particularly egregious since the only benefit of the chosen accounting period and early dedication could be realized even if a later accounting period were used.	The benefit of the chosen accounting period and early dedication cannot be realized in all years if a later accounting period is used. See 2d., 5b., 5n. above, 8g. below.
6o. The draft violates the underlying principle of improving operational flexibility of the CVP. Propose that March 1 to February 28 period be used.	Interior disagrees. See 2d. above.
6p. The October to Sept accounting period, when coupled with an up-front use of 200k of (b)(2) water will impair, not improve, operation flexibility of the CVP.	Interior disagrees. See 2d., 5b. above, 8g. below.
6q. DWR analysis suggests that in about 25% of the years, Interior will, if it	The Revised Decision does allow for 200,000 af of (b)(2) water

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<p>dedicates 200,000 af of (b)(2) water in the October through January period, dedicated more than 800,000 af of water pursuant to (b)(2). The problem arises because the draft decision requires the 200,000 af to be dedicated during October through January, and if after January more than 600,000 af is needed to meet the requirements of the 1995 WQCP or post-92 ESA requirements, then Interior will have exceeded the statutory limit. This is unlawful.</p>	<p>to be dedicated and managed in the October through January period; however, the actual amount used in that period will depended on fishery needs and hydrologic and reservoir storage conditions. Interior does recognize that in some years the 1995 WQCP and post-1992 ESA requirements, when added to the water used in October through January period, can exceed a total of 800,000 af. In some years the 1995 WQCP and post-1992 ESA requirements can exceed 800,000 af. Modeling indicates that these circumstances often occur in years that show high costs for meeting X2 days required by the WQCP. As stated in the Revised Decision, Interior will account for the total amount of CVP water costs against the annual (b)(2) allocation, up to the balance of (b)(2) water remaining at that time. Interior does not believe that meeting its obligations is unlawful.</p>
<p>6r. The program for water banking and transfer/exchange is not adequately addressed. This section should be deleted and developed on a schedule separate for the draft decision.</p>	<p>See 2k., 6c. above. Section IV was not intended to be comprehensive. As the Revised Decision indicates, Interior will be developing a banking policy at a later time. Interior believes that the principles outlined in Section IV are important and will remain in the Revised Decision.</p>
<p>6s. If this section is to be included, the final must make the principles of water banking and transfer/exchange program more definitive and eliminate the existing ambiguity. An overriding principle should be that no banking or transfer/exchange will occur if the action could adversely impact other CVP water purposes.</p>	<p>See 6r. above. Section VI. C. states “The transfer, exchange, and /or banking cannot interfere with the storage, diversion, or delivery of water for other purposes of the CVP.”</p>
<p>6t. The draft decision does not adequately explain how implementation of (b)(2) will be coordinated with (b)(1) actions.</p>	<p>See 5h., 5i. above.</p>
<p>6u. Explain how determinations will be made to modify CVP operations to provide additional flows or exports curtailments for fish and wildlife purposes in accordance with (b)(1).</p>	<p>Processes are in place, including regular meetings and conference calls of groups such as the DAT, B2IT, EWAT, and CALFED Ops Group, that provide for Reclamation and Service staff to coordinate water and power operations requirements with fishery needs. Reclamation staff will compare projected daily operations to potential alternatives that may better meet the fishery needs. If, for example, there is no identified net increase</p>

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	<p>in CVP reservoir releases or net reduction in exports by implementing an alternative that achieves the fish needs, Reclamation staff could modify the operation and communicate that decision through these processes. If the modification appears to cause impacts to the fulfillment of the Secretary's remaining contractual obligations to provide CVP water for other authorized purposes, it will not be implemented without use of assets such as (b)(2) water or the EWA.</p>
<p>6v. Suggest Interior (1) report and describe quantitatively the proposed (b)(1) action prior to re-operating the CVP and (2) identify and quantify in its end of the year accounting summary of CVP operations all (b)(1) actions.</p>	<p>Interior does not intend to implement a separate annual accounting process for (b)(1) actions. However, Interior staff will document modifications of operations on a periodic basis and communicate that information to stakeholders. See 6u. above.</p>
<p>6w. The analysis used to determine that the proposed re-operation does not conflict with fulfillment of the Secretary's remaining contractual obligations to provide CVP water for other authorized purposes must be completed prior to re-operating the CVP.</p>	<p>Interior will make the determination that there are no anticipated impacts to the fulfillment of the Secretary's remaining contractual obligations to provide CVP water for other authorized purposes prior to implementing a proposed re-operation.</p>
<p>6x. The final should include protections to avoid undue or unnecessary impact to other CVP purposes – include assurance that Interior will use other resources, like EWA, to mitigate for adverse impacts to the water supply of south of Delta contractors.</p>	<p>Interior and the other CALFED Agencies made the commitment in the CALFED ROD to implement water management actions, such as EWA, which are intended to alleviate some of the impacts to the water supplies of CVP agricultural contractors South of the Delta. Interior does not believe that commitment needs to be reiterated in this Revised Decision.</p>
<p>6y. To accomplish a more equitable balance among competing uses, the shortage provision should be revised. Nowhere in the CVPIA is the Secretary's discretion limited to impose shortages to circumstances when agricultural water service contractors <u>north</u> of the Delta suffer reduced allocations.</p>	<p>See 1a., 2m., 4f., 5n., 6f. above.  Interior agrees that the Secretary's discretion was not limited to circumstances when agricultural water service contractors <u>north</u> of the Delta suffer reduced allocations. However, the Secretary's discretion is limited to reducing the amount of (b)(2) water available based on hydrologic circumstances. Shortages to agricultural water service contractors north of the Delta are more affected by hydrology whereas agricultural water service contractors <u>south</u> of the Delta are more affected by export,</p>

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	conveyance, and San Luis Reservoir storage constraints.
6z. The shortage criterion should reflect a reduction in the amount of water dedicated to (b)(2) uses whenever agricultural deliveries of CVP water are reduced due to hydrologic circumstances equal to the percentage realized by CVP contractors, but not more than 25%.	See 2m., 6y. above.
6aa. Propose that the final decision include a shortage provision that assumes reductions are imposed upon ag deliveries of CVP water due to hydrologic circumstances when south of Delta ag deliveries fall below 70% of their contract entitlement.	See 1a., 6.f., 6.y. above.
6bb. The proposed fish protection and habitat restoration actions are unsupported by the record. There exists inadequate scientific data to support the measures described in Attachment 2.	Interior disagrees with this characterization. See 6g. above.
<b>7. James Snow, Deputy General Manager – Water Policy, Westlands Water District</b>	
7a. The draft decision continues to allow Interior to implement section 3406(b)(2) in a manner that is uncertain, is unnecessarily conservative, and inequitably impacts south-of-Delta CVP contractors.	Interior disagrees. See 6h. above.
7b. Refer to San Luis & Delta Mendota Water Authority's comments.	See 6a.-bb. above.
<b>8. Richard A. Denton, Water Resources Manager, Contra Costa Water District</b>	
8a. Forecast and account for water quality effects and environmental benefits of (b)(2) actions.	Interior recognizes a need for annual accounting and accountability of (b)(2) actions. The monitoring of fish and wildlife and habitat conditions to assess biological results and effectiveness of the use of (b)(2) water will be the primary focus although the data may also be used to assess water quality effects.
8b. Suggestion: Interior forecast each year how (b)(2) water will be used, the environmental benefit, and water quality effects. At the end of each accounting year Interior review (b)(2) actions, accounting for water quality benefits and impacts as well as environmental benefits. Such a review can be used to inform and adjust (b)(2) use in subsequent years.	Comment noted. However, quantifying changes to water quality in the Delta resulting from (b)(2) action will not be a requirement of the (b)(2) accounting process.
8c. An accounting for water quality effects will complete the current accounting for the environmental benefits of (b)(2) actions.	Accounting for water quality affects will not be a requirement of the (b)(2) accounting process.



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8d. The process for section 3406(b)(1) accounting needs to be defined in order to differentiate between (b)(1) re-operation actions and (b)(2) actions. All accounting of the water quality effects and environmental benefits should be performed for (b)(1) actions as well.	See 5h., 5i., 6v. above.
8e. Ensure that upstream release specified to flow through the Delta do in fact flow through the Delta.	If and when Interior specifies that an upstream release of (b)(2) be allowed to flow through the Delta, Interior will pursue the necessary regulatory protections for that release.
8f. Section II.B.1.b. – Suggest that the release also be over and above other WQCP requirements such as minimum outflow requirements and the flows required to meet M&I water quality standards. This will ensure that flows designated to flow through the Delta actually increase Delta outflow and result in both improved fish habitat and water quality.	See 2f., 2g., 4i., 4e. above.
8g. Address potential difficulties with October-September accounting year. This misalignment creates a risk of possibly not being in compliance with the directions of the District Court. The risk can be minimized by either modifying the accounting period or providing a mechanism to backstop (b)(2) actions, such as carryover of (b)(2) water, exchanges with contractors, other water users or the EWA, and purchases in coordination with EWA and water purchased under section 3406(b)(3).	Interior considered several alternatives for the (b)(2) accounting period and acknowledges there were potential difficulties with each one of them. Interior will work with the CALFED agencies to resolve any potential difficulties in accomplishing fishery protection actions and communicate with stakeholders. See 2d., 5b., above.
8h. Use of 40-30-30 index for shortage criteria is an improvement. Supports the replacement of the Shasta criteria with shortage criteria tied to agricultural contractor allocations and the Sacramento 40-30-30- index.	Comment noted.
<b>9. Nicole A. Tutt, Counsel for Pajaro Valley Water Management Agency</b>	
9a. Some features of the draft decision allow for CVPIA implementation that will continue the prior history of uncertainty, unnecessarily conservative contract allocations and inequitable distribution of the impacts to south-of-Delta contractors.	Interior disagrees with this characterization of the Revised Decision.
9b. Refer to San Luis & Delta Mendota Water Authority's comments.	See 6a.-bb. above
<b>10. John Sweigard, General Manger, Patterson Irrigation District</b>	
10a. The burden of the reallocation of 800,000 af of CVP water for purposes of section 3406(b)(2) has been placed almost exclusively on south-of-Delta CVP water service contractors.	Interior disagrees. The CVPIA requires that 800 TAF of CVP yield be dedicated to fish, wildlife, and habitat restoration purposes. The agricultural allocation process is a separate issue,

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	and is based on hydrology, storage, conveyance capability, and water rights.
10b. Pleased that the draft decision counts as part of the (b)(2) dedication of all the CVP's post 1992 WQCP and ESA requirements, and the reset and offset accounting mechanisms have been removed.	Comment noted.
10c. Refer to San Luis & Delta-Mendota Water Authority's comments.	See 6a.-bb. above.
<b>11. Dennis Falashi, General Manager, Panoche and Pacheco Water Districts</b>	
11a. The burden of the reallocation of 800,000 af of CVP water for purposes of section 3406(b)(2) has been placed almost exclusively on south-of-Delta CVP water service contractors.	See 10a. above.
11b. Pleased that the draft decision counts as part of the (b)(2) dedication of all the CVP's post 1992 WQCP and ESA requirements, and the reset and offset accounting mechanisms have been removed.	Comment noted.
11c. Refer to San Luis & Delta-Mendota Water Authority's comments.	See 6a.-bb. above.
<b>12. David Weisenberger, General Manger, Banta-Carbona Irrigation District</b>	
12a. The burden of the reallocation of 800,000 af of CVP water for purposes of section 3406(b)(2) has been placed almost exclusively on south-of-Delta CVP water service contractors.	See 10a. above.
12b. Pleased that the draft decision counts as part of the (b)(2) dedication of all the CVP's post 1992 WQCP and ESA requirements, and the reset and offset accounting mechanisms have been removed.	Comment noted.
12c. Refer to San Luis & Delta-Mendota Water Authority's comments.	See 6a.-bb. above.
<b>13. William D. Harrison, General Manger, Del Puerto Water District</b>	
13a. The burden of the reallocation of 800,000 af of CVP water for purposes of section 3406(b)(2) has been placed almost exclusively on south-of-Delta CVP water service contractors.	See 10a. above.
13b. Pleased that the draft decision counts as part of the (b)(2) dedication of all the CVP's post 1992 WQCP and ESA requirements, and the reset and offset accounting mechanisms have been removed.	Comment noted.
13c. Refer to San Luis & Delta-Mendota Water Authority's comments.	See 6a.-bb. above.

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<b>14. Sargeant J. Green, General Manger, Tranquillity Irrigation District</b>	
14a. The burden of the reallocation of 800,000 af of CVP water for purposes of section 3406(b)(2) has been placed almost exclusively on south-of-Delta CVP water service contractors.	See 10a. above.
14b. Pleased that the draft decision counts as part of the (b)(2) dedication of all the CVP's post 1992 WQCP and ESA requirements, and the reset and offset accounting mechanisms have been removed.	Comment noted.
14c. Refer to San Luis & Delta-Mendota Water Authority's comments.	See 6a.-bb. above.
<b>15. David J. Coxey, General Manger, San Luis Water District</b>	
15a. The burden of the reallocation of 800,000 af of CVP water for purposes of section 3406(b)(2) has been placed almost exclusively on south-of-Delta CVP water service contractors.	See 10a. above.
15b. Pleased that the draft decision counts as part of the (b)(2) dedication of all the CVP's post 1992 WQCP and ESA requirements, and the reset and offset accounting mechanisms have been removed.	Comment noted.
<b>16. John Herrick, Counsel, South Delta Water Agency</b>	
16a. The WQCP requires that four Delta water quality objectives for agricultural beneficial use be met, including the objective commonly referred to as the Vernalis Standard. Reclamation's modeling indicates that it will not meet the Vernalis Standard in approximately half of all water year types. Reclamation's New Melones permits specifically require it to meet the Vernalis Standard. Since Reclamation's current New Melones operation plan is not predicated to meet the standards, the draft decision is contrary to law.	Interior disagrees that: (1) the current New Melones operations plan is predicated on not meeting the Vernalis Standard, (2) the New Melones operations plan is at issue in the Revised Decision, and (3) the Revised Decision is contrary to law.
16b. Reclamation has a pre-existing obligation in what is referred to as the 1997 Department of Fish and Game Agreement. Reclamation must fulfill its contracts with Central San Joaquin Conservation District and Stockton East Water District before it can release (b)(2) water on the Stanislaus for fish and wildlife.	Interior believes this Commenter is referring to the 1987 agreement with the Department of Fish and Game. The 1987 agreement provides for releases in excess of 98,300 acre-feet when certain conditions are met. Interior recognizes that implementing Section 3406(b)(2) has involved a significant reallocation of CVP yield. The New Melones authorization statute subordinates deliveries to out-of-basin contractors to in-basin needs, which include Vernalis water quality and instream fishery flows in the Stanislaus River. Interior will continue the

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	effort to prepare operations plans that reflect prior agreements such as the 1987 Department of Fish and Game agreement.
16c. Recent transfers of CVP water have violated section 3405(a)(1)(I) which requires the transferred water result from a decrease in consumptive use by the transferor. Reclamation must abide by the principle that CVPIA mandates transfers not simply by a reallocation of existing supply in order to accommodate greater consumptive uses.	Interior disagrees that recent transfers of CVP water have violated CVPIA section 3405 (a)(1)(I).
16d. It's not clear how Reclamation can legally "make-up" lost yield through EWA or other operations. Reclamations recovers part of the dedicated water through EWA or joint point operations with DWR, then the final accounting for the year will net less than 800,000 af. This requires further analysis and explanation.	<p>Water released for an instream purpose upstream may be diverted for a second purpose downstream unless Interior determines that these flows are needed for Delta outflow. Interior is not attempting to "make-up" lost yield by allowing (b)(2) water to be diverted for another purpose, such as EWA. Rediverting upstream releases does not result in Interior using less than 800,000 af of water in any year.</p> <p>Some actions for fishery protection can be taken using EWA assets. Joint Point of Diversion is considered a water augmentation tool that can be taken only when various protective provisions are satisfied. Stage 2 use of the Joint Point of Diversion is not accounted as a credit to (b)(2) actions.</p>
17. Jeanne M. Zolezzi, Counsel, Stockton East Water District	
17a. One of the purposes of the CVPIA is "to achieve a reasonable balance among competing demands for use of CVP water." Interior has not considered this purpose when formulating and implementing its annual (b)(2) plan. The draft decision does nothing to accommodate this purpose.	Interior disagrees. See 6h. above.
17b. Taking an average of 100,000 af from a project facility with a yield of 3,000 af does not "achieve a reasonable balance ...". The draft decision should include language confirming that Interior's (b)(2) allocation from any area included in the yield calculation will not exceed that area's available yield.	The Interim Plan of Operations for New Melones Reservoir was developed recognizing the limited yield based on the 1987 – 1992 drought period and also recognizing that there are many wet periods in the historical record when substantial water supplies are available. Interior agrees that achieving a reasonable balance is an objective when developing operations plans. Annually, Interior will use its discretion when implementing (b)(2) fish actions based on providing the greatest

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	biological benefits considering the hydrologic conditions.
17c. Interior’s monitoring has been inadequate. On the Stanislaus River, Interior has done no work to determine the value of continued high release. The draft decision must include and describe specific monitoring plans.	Interior disagrees that fisheries monitoring has been inadequate. Current efforts on the Stanislaus River include juvenile surveys (rotary screw traps, snorkel surveys, and coded-wire tag studies) as well as adult escapement surveys. Interior has expressed its intention to continue to monitor fish and wildlife and habitat conditions in cooperation with other fisheries agencies and stakeholders to assess the biological results and effectiveness of the use of (b)(2) water in the Revised Decision.
17d. Section II.B.2.a. – Is there an example of upstream fish and wildlife actions that cause export reductions?	A CVP reservoir release could be reduced to conserve cold water resources for later in the year. If, during balanced conditions in the Delta, the reduced flow cannot be made up with an increase from another source, exports would be reduced. See 5f. above.
17e. Section C. – With regard to the stakeholder process, the draft decision states that this process will be accomplished through “bi-annual workshops with all interested parties.” Attachment 2 does not provide additional information on the form that this “stakeholder process” will take. Past meetings were only an opportunity to report on actions that have occurred – not to “seek input regarding development of the annual (b)(2) fishery actions plan and how the plan is integrated into the operations forecast.” This process must be fully developed and described in the draft decision.	Interior disagrees that past bi-annual workshops have only been focused on after-the-fact (b)(2) reporting. One function of the workshops has been to discuss annual (b)(2) fishery action plans with the stakeholders as well as other agencies. Another function has been to report on the accounting for (b)(2) fish actions. In addition, Interior coordinates the implementation of fish actions with the CALFED agencies and interested parties at the CALFED Operations Group meetings, and the DAT and OFF conference calls. Interior believes the process is working and will continue to use it in the future.
17f. The draft decision does not describe how the accounting process will be communicated to the public – it has been difficult obtaining this information in the past. Strongly recommend that monthly reports be maintained on the website for public access.	In addition to the bi-annual workshops and other meetings discussed in 17e., Interior maintains an internet web site at <a href="http://www.mp.usbr.gov/cvo/">http://www.mp.usbr.gov/cvo/</a> which contains the current month’s detailed (b)(2) and EWA operational forecasts. There is also a summary of (b)(2) and EWA placeholders for the current water year. These reports are updated monthly. The (b)(2) accounting is made available at the bi-annual workshops and on the website after the numbers are finalized.
17g. The draft decision must include a process for (b)(1) determinations to be made, including development of criteria, and an opportunity for public review.	See 2j., 5h., 6d. above.

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If re-operation draft decisions are not subject to public review and scrutiny there is no opportunity to determine whether or not the CVPIA requirements are being followed.	
17h. Will there be an opportunity for public input into the banking policy? Will water banking be undertaken before the policy is adopted?	See 2k. above.
17i. Any banking policy adopted must include a method for Interior to determine whether or not a banking proposal interferes with the storage diversion or delivery of water for other CVP purposes, particularly carry-over storage. Methodology should include an opportunity for contractor input.	See 2k., 6r., 6s. above.
17j. Section VI. – Provide support for Interior’s interpretation of this provision. There is no support for severe restrictions to occasions when only those agricultural water service contractors north of the Delta are reduced.	See 6f., 6y. above. Hydrologic conditions in CVP controlled streams are considered when making decisions for (b)(2) actions.
18. Mr. Dante John Nomellini, Manager and Co-Counsel, Central Delta Water Agency	
18a. It appears that the regulation will perpetuate the failure to assure that the Vernalis Salinity Standard will be met. The requirement of meeting the standard is a water quality requirement imposed as a SWRCB permit condition.	Interior acknowledges that meeting the Vernalis Salinity Standard is a condition of Reclamation’s water rights permit. However, Interior disagrees that the Revised Decision perpetuates a failure to assure that the standard will be met. Studies of New Melones yield indicate that New Melones does not have enough water to meet all purposes, including maintaining minimum permit requirements at desired levels through an extended drought.
18b. Congress intended that the (b)(2) and (b)(3) water would provide increased benefits to fish, wildlife and habitat including water quality over and above the requirements in existence on 10/30/92. Shifting water from the purposes of meeting the pre-existing requirements to the purpose of meeting the new requirements is a circumvention of the law. Footnote 6 is not a forthright representation of the real intention, which is not to meet the pre-existing requirements.	Interior disagrees that its intention is to not meet pre-existing requirements and that footnote 6 is not a forthright representation of Interior’s intention in implementing (b)(2).
18c. The explanation following Section II.A. is misleading in that it equates the needs of fall run salmon to those of endangered steelhead/rainbow trout. The difference is that steelhead rear in freshwater for a longer period and thus suitable habitat conditions in the upstream rearing areas should be maintained	Comment noted. While the text in section II.A. does not specifically discuss juvenile steelhead rearing for one or more years in upstream areas, Interior recognizes the need to maintain adequate temperatures and flows to protect them throughout the

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throughout the year.	year. In practice, Interior has used (b)(2) assets to protect juvenile steelhead and will continue to do so in the future.
<b>Environmental Interests</b>	
19. Barry Nelson, NRDC; Spreck Rosekrans, Environmental Defense; Christa Swanson, The Bay Institute of San Francisco; Zeke Grader, PCFFA; and David Lewis, Save San Francisco Bay Association	
19a. The draft decision prematurely seeks to implement district court rulings that may or may not be upheld, and its issuance at this time is ill-considered. Recommend that Interior withdraw the revised draft policy until the 9 <sup>th</sup> circuit has ruled on pending appeals. The appropriate forum for resolving this issue is clearly the federal court proceeding.	Interior disagrees. Interior believes that finalizing the Revised Decision at this time is an appropriate exercise of the Secretary's discretion.
19b. Shortage Criteria: Strongly oppose the proposed revision to the (b)(2) shortage criteria which is inconsistent with the CALFED ROD and goes beyond the scope of the district court ruling. The criteria would more frequently reduce the amount of water dedicated to the environment and would harm fish and wildlife and further interfere with the achievement of the CVPIA's fish and ecosystem restoration mandates. This revision would undermine the Tier 1 ROD requirements in the EWA and the BO.	See 1a., 1b., 2m., 4f., 6f. above.
19c. Upstream Actions: Support the target of using 200,000 af of (b)(2) water for upstream action during October to January.	See 2d. above.
19d. Excluding (b)(2) flows through the Delta from the E/I ratio: Support the draft decision to continue to exclude (b)(2) flows that are needed to flow through the Delta from the E/I ratio in the WQCP. The question of under what circumstances (b)(2) may be redirected to consumptive use even when it could be beneficially re-used for environmental purposes is before the court of appeals and this is not the proper forum to discuss these concerns.	See 2f., 2g., 4i., 8e. above. Interior disagrees that the Revised Decision is not the appropriate forum to address the circumstances under which (b)(2) water may be rediverted for another purpose.
19e. Banking Criteria: The revision merely reflects that CVPIA authorizes banking, it does not include strategies to utilize banking or indicate that banking will be implemented effectively in the future. Banking of (b)(2) water could be an important tool to maximize environmental benefits, including implementing the restoration mandates of the CVPIA, as well as to ensure that Interior does not utilize more than the 800,000 af. Urge the development and implementation of banking criteria.	See 2k. Interior agrees that banking could be an important tool for maximizing (b)(2) benefits.

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19f. Streamlined Accounting: "... reviewing the accounting process ..." is inadequate to meet legal requirements. If Interior considers "streamlining" proposals, we urge Interior to coordinate fully with the State, to carefully evaluate consistency with the CALFED ROD and to evaluate possible changes in an open and inclusive process.	Interior disagrees that streamlining the accounting process is inadequate to meet legal requirements. See 2i. above.
19g. Joint Point: The draft decision does not directly address CVP use of the SWP's Bank pumping facilities. For (b)(2) accounting purposes, CVP use of SWP pumps should count the same as its use of its own Tracy pumps. Recommend that Interior include reference to the changes regarding joint point of diversion in the policy implementing section 3406(b)(2).	Interior, in addressing reductions of CVP exports, including use of Banks Pumping Plant, has chosen not to include use of Stage 2 Joint Point of Diversion as a credit in accounting of (b)(2) water use. As permitted by the SWRCB, and as intended in the CALFED ROD, Stage 2 Joint Point is a method for augmenting CVP water supplies. The approval process for using Stage 2 Joint Point requires response plans to address concerns about water levels in the southern Delta, water quality in the southern and central Delta, and protection of fish and wildlife and other legal users of water.
19h. Modeling Errors: With regard to the Accounting Process, Interior should provide specific assurances that errors have been corrected.	The forecast model has been modified. That model is used to forecast operations, including use of (b)(2) water. The actual daily accounting properly addresses these concerns.
19i. Failure to fully implement (b)(2) and salmon doubling: Interior's failure to correctly implement use of the 800,000 af of (b)(2) water has contributed to the failure to achieve salmon doubling goals and in some cases has resulted in direct harm to the same fisheries that the CVPIA was intended to protect.	Interior will continue its efforts to achieve the anadromous fish doubling goal identified in the CVPIA. While the doubling goal has not been fully realized, salmonid populations in the Central Valley are generally improving from pre-1992 levels, and that overall (b)(2) implementation has benefited salmon and steelhead. Interior disagrees that it has caused direct harm to fisheries. Commenter's allegations regarding fall run Chinook mortality in 2001 is inaccurate as to the cause; the primary reason for the high water temperatures was low storage due to dry hydrologic circumstances.
20. Robert N. Ferroggiaro, Vice President, Conservation, Federation of Fly Fishers	
20a. The draft decision fails to provide for releases to provide water temperature control for steelhead, which are protected by ESA.	Interior recognizes the need to maintain adequate temperatures and flows to protect juvenile steelhead in upstream areas throughout the year. Interior has used (b)(2) assets to protect juvenile steelhead in the past, and will continue to do so in the



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	future.
20b. The single provision of water in a timely fashion would provide for temperature control and have a profound and positive impact on the recovery of the species, and make greater contribution to the recovery of the species than the cumulative impact of all the proposed regulations. Urge compliance with obligation under section 3406(b)(2) to provide adequate flows to provide temperature control for steelhead.	See 20b. above.
20c. Of the 800,000 af of (b)(2) water intended to double Central Valley fisheries, only 200k to 300k now remain available.	Interior disagrees. Interior will continue to dedicate and manage the full 800,000 af annually for the purposes set forth in CVPIA Section 3406 (b)(2).
21. Eric Wesslman, regional Representative for CA/NV/HI Sierra Club; Mr. Nick DiCroce, Board of Governors, California Trout, Inc.	
21a. The draft decision will significantly undermine the level of fishery protection that was intended by the CVPIA.	Interior disagrees. Interior will continue to dedicate and manage the full 800,000af annually for the purposes set forth in CVPIA Section 3406 (b)(2).
21b. The definition of modification of CVP operations that would be applied pursuant to section 3406(b)(1) is absurdly narrow. The draft identifies only a small fraction of anadromous fish actions that should qualify under section 3406(b)(1).	See 2j., 5h., 5i., 6d., 17g. above.
21c. Any re-operation should count under section 3406(b)(1) whenever it is made. For example, Interior knows in advance that it will not need to make releases in August and September to support the 195,000 af of “D1485 Wheeling” in exports and the SWP’s pumps – Interior should be able to increase its release earlier in the water year in the amount that these late summer releases are reduced by a (b)(1) operation. It is not necessary that the re-operation be anticipated in advance.	See 19g., 21b. above.
21d. Sometimes it is unknown whether an entire action or only part can be accomplished through re-operation, in these cases the (b)(2) account, or the EWA, could be used as an insurance policy to accomplish either the entire re-operation or part of it.	Comment noted. In the event a planned re-operation is interrupted or results in water supply impacts, Interior will use (b)(2) assets to accomplish the fish action, or will discontinue the action.
21e. Interior should not undermine the CVPIA by arbitrarily ignoring most of the re-operation that takes place in annual CVP operations.	Interior disagrees that it is arbitrarily ignoring most of the reoperation that already occurs. Interior is committed to reoperating the CVP to enhance assets available for fishery

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	purposes when consistent with the Revised Decision.
21f. Refer to NRDC, Environmental Defense, The Bay Institute of San Francisco, PCFFA, and Save San Francisco Bay Association comments.	See 19a.-i. above.
22. Marc Christopher, Policy Advocate, Friends of the River; and Byron Leydecker, Governor, California Trout	
22a. Refer to NRDC, Environmental Defense, The Bay Institute of San Francisco, PCFFA, and Save San Francisco Bay Association comments.	See 19.a.-i. above.
22b. The draft decision does not reflect the stated intent of CVPIA – it takes great effort to undercut efforts aimed to improve the environment – the draft decision elects to adopt the least environmentally beneficial construction.	Interior disagrees with this characterization of the draft Revised Decision.
22c. The draft decision misinterprets the language of 3406(b)(1) and (b)(2). A modification or release of water that does not affect the operation or obligations of the CVP should qualify as a (b)(1) action. Example would be the June 2000 operation.	See 2j., 5h., 5i., 6d., 17g., 21b. above.
22d. Requiring an absolute determination of “No Anticipated Impact” before allowing a modification of operations is arbitrary and not supported by the statute.	CVPIA (b)(1)(B) allows Interior to modify operations to provide flows of suitable quality, quantity and timing to protect all life stages of anadromous fish. These flows are to come from water dedicated under 3406(b)(2), water acquired under 3406(b)(3), or from other sources which do not conflict with fulfillment of the Secretary’s remaining contractual obligations to provide CVP water for other authorized purposes. See 6d. above.
22e. Section III would require Reclamation to know, in advance, that it possesses the resources to take compensating future actions. To require that these actions have not identified impact, or foreseeable risk of impact, ignores the fact that neither the CVP nor their contractors have done any modeling or set forth any evidence that could lead one to adequately determine whether or not there is a “foreseeable risk of impact.” Therefore it is impossible to claim with any degree of certainty that re-operations would or would not have impacts on deliveries. This would limit re-operations improvements under (b)(1) to an ineffectual level.	Interior disagrees. It is possible to analyze the potential risk of impact on a case by case basis. Interior believes that its interpretation of reoperation does not reduce improvements to an ineffectual level but instead provides operational flexibility to allow for greater improvement. See 2d., 5h., 5i., 6d., above.
22f. Section III – The “proximity in time requirement” for determining (b)(1) actions is arbitrary and is not supported by the statute. The proximity in time	The proximity in time requirement is neither arbitrary nor unsupported by the CVPIA. Having an operation and

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of two modifications is irrelevant to the effect on the project purposes. The time proximity of the operations, such an action would not affect the project purposes and should be considered a (b)(1) action.	corresponding reoperation occur in relative temporal proximity is important for assessing the risks to and preventing unanticipated impacts to other CVP purposes.
22g. The draft decision is arbitrarily changing the shortage criteria resulting in even further reductions to (b)(2) water. By using the new criteria, the amount of (b)(2) water would be reduced because of a “dry” or “critically dry” year on the average of roughly 1 in every 3 years.	See 1a., 2m., 3f., 4f., 5n., 6f. above.
23. Chuck Knutson, President California-Nevada Chapter, American Fisheries Society	
23a. The draft decision seems to back away from the stated intent of the CVPIA to achieve a reasonable balance among competing demands. The protocols outlined will result in substantially less protection for the many fish species adversely impacted by CVP operations.	See 6h., 20c. above.
23b. With accounting system proposed, there will be many circumstances when the (b)(2) water account will be charged for changes in CVP operations that do not affect the CVP’s water delivery capability or yield. This will occur because use of (b)(2) water is measured in terms of any and all changes in project operations compared to a calculated baseline even when compensating operational changes or favorable hydrology could eliminate the effect of the action on annual water deliveries.	Interior is accounting for dedication and management of 800,000 acre-feet annually. Interior is not accounting for effects on annual deliveries. Project yield has been defined in the statute as delivery capability during the drought period of 1928 – 1934. The methods and procedures for annual accounting were chosen to simplify and clarify the accounting of use of (b)(2) water.
23c. The proposed protocols will substantially reduce the extent to which the (b)(2) water can be used in furtherance of the CVPIA and AFRP goals. The accounting rules mean the (b)(2) water will be used up more quickly each year as fish protection actions are taken. The shortage criteria will result in more frequent reductions in size of the (b)(2) account, from 800,000 af to 600,000 af.	See 1a., 2m., 3f., 4f., 5n., 6f., 23b. above .
23d. Implementation of 3406(b)(2) was a key component of the CALFED ROD. The proposed rules not only appear to diminish the ability of Interior to achieve congressionally mandated fishery restoration goals but also erode the agreed-upon baseline restoration capability of the CALFED Program.	See 1b., 4d. above.
23f. Support the intent to target 200,000 af of (b)(2) water in the October through January period.	See 2d. above.
23g. Support the full use of modifications of CVP operations that will provide	See 6d., 22d. above.

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benefits to fish without affecting CVP deliveries.	
<b>Businesses and Organizations</b>	
24. Paul Olmstead, Water and Power Resources Specialist, SMUD	
24a. Request response to comments prior to finalizing decision.	As with past decisions on implementation of (b)(2), Interior is releasing these responses to comments with the final Revised Decision.
24b. Section II.B.1.a – Clarify the definition of the term “period” in this section. Is the period the water year (October – Sept) or a daily period? Regarding the calculations based on daily releases, are the calculations based on CVP wide operations or individual changes in reservoir operations?	In general (b)(2) accounting will be based on daily changes at CVP facilities, excluding (b)(1) operations. See 2h., 2i., and 5h. above.
<p>24c. Section II.B.1.b. – Section IV accounts for the action in Section II.B.1.b, then is the water not released under Section II.B.? Can this water be re-released for additional fishery benefits if banking, transfer and/or exchange deals have been made in advance?</p> <p>Where is this release accounted for and is it considered (b)(2) water? Is the initial accounting of this water taking place in Section II.B. or Section IV?</p> <p>Footnote 7 – Butte Creek is a non-CVP controlled stream but is addressed as providing (b)(2) water as a backstop. This needs clarification.</p>	<p>The text in section II.B.I.b. has been revised to clarify that upstream releases of (b)(2) water specified to flow through the Delta are not available for banking, transfer, or exchange.</p> <p>Upstream releases of (b)(2) under section II.B.I.a. are available for banking, transfer, or exchange if the water is identified as such before it is released, and will be accounted for in section IV.</p> <p>Re: Footnote 7 and Butte Creek. Interior is working on an agreement with certain parties to exchange up to 40 cfs of water in Butte Creek (a non-CVP stream) for water from the Sacramento River (a CVP stream). The exchange would not impact CVP contractors, but (b)(2) assets will serve as insurance. See 2h., 2i., 5h. above.</p>
24d. Section II.B.2. – Are actions that are referred to here considered “backing up?” Explain how actions taken upstream, which are used for fishery benefits, reduce exports? Is “backed-up” water that is accounted for in this section available for banking, exchange or transfer?	<p>Regarding banking, see 2k., 5e., 6r. above.</p> <p>Regarding an example of an upstream fish action that would cause an export reduction see 5f. above.</p>
24e. Section IV.A. – Define banking. Is (b)(2) water that is “backed up” into CVP reservoirs considered banked? If so, does this concur with court order? Clarify if banking includes water deliveries to off-stream storage and how “deliveries” as they are defined in Section IV.B. will take place.	<p>A Banking policy will be developed (see 2k., 5e., 6r. above).</p> <p>The basic concept is to identify a specific amount of (b)(2) water as well as a specific facility for storage, and to hold the water for use in a subsequent accounting year.</p>

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24f. Section IV.A. and B. – Is all banking, transferred or exchanged water accounted in Section IV? Does this conflict with Section II which states it needs to be accounted for under the provisions of that section?	There is no conflict with the text in section II. Section II states that all banked, transferred, or exchanged (b)(2) water will be accounted for in section IV.
24g. Section IV.C. – Principles need to be provided to clarify how Interior will “arrange” to cover costs of banking, transfers, and exchanges. Additional language is needed that states these are non-reimbursable and that any “arrangements” will not redirect impacts to other project purposes including project pumping costs.	Comment noted.
24h. Recommend WAPA be included in developing CVP operating plans so its obligations to CVP preference power customers will not be impacted.	WAPA will continue to have the opportunity to participate in the b2IT, EWA Team, and CALFED Operations Group meetings as well as the DAT and OFF conference calls. See 17e. above.
25. Jane Dunn Cirrincione, Assistant General Manager, Legislative & Regulatory Business Unit, Northern California Power Agency	
25a. To maintain the balance of competing demands for the use of CVP water the decision needs to promote a process that increases the transparency of both the (b)(2) water management actions and the (b)(2) accounting, and needs to emphasize the “no conflict” principle for (b)(1) re-operation.	See 2i., 6d., 6h. above.
25b. Section II.B.1.a. – Needs to be more specific in its definition of the “period” for which upstream flows are accounted. Language in Section II.A. suggests that this period is the October – Sept water year but II.B.1.a. appears to allow a deviation to a different timeframe.	The accounting year in both sections is October 1 through September 30. The term “accumulated over the period” in II.B.1.a. is meant to insure that upstream releases are properly accounted for within the timeframe (i.e., the number of days) that (b)(2) actions differ from baseline operations at a CVP facility.
25c. Section II.B.1.a. – Needs to be specific in the accounting of daily changes accumulated on an “individual facility basis.” The current language suggests that calculations would allow or even support offsetting scenarios that are inconsistent with the court order.	Section II.B.1.a. will not allow for offset that is inconsistent with the Federal District Court decision. See 5d. above
25d. Section II.B.1.b. – The language regarding the accounting of (b)(2) water that is banked, transferred or exchanged is confusing/conflicting.	See 2k., 6r. above.
25e. Water that is release under II.B.1.b. may be banked, transferred or exchanged if the water is identified for such use before release and shall be accounted for under Section IV – this is conflicting language if the action and accounting is handled by Section IV, then the water is not being released under Section II.B.	See 2k., 24e., 24f. above.

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25f. Is it the intent that II.B. water can be re-released at a later period for additional fishery benefits if banking, transfer and/or exchange deals have been made in advance, and that re-release does not get re-accounted as (b)(2)?	The intent is that water will be accounted for a the time it is banked, and not re-accounted for at the time of release.
25g. Perhaps the solution is recognizing that banking, transferring, and/or exchanging (b)(2) water doesn't require a (b)(2) accounting but is "merely" a (b)(2) water management activity.	Comment noted.
25h. The last sentence in the explanation for Section II.B.2.a. is unclear. It is unclear how upstream actions would by themselves cause exports to be reduced? Is a "backing up" scenario implied here, where reduced releases from reservoirs occur in conjunction with a pumping curtailment? If so, how is that water managed after it is backed up since it has already been accounted for under Section II.B.2. and doesn't seem to fit the banking/exchange/transfer conditions?	See 2k., 24d., 24e. above.
25i. Section III language needs to be clarified to fully support CVPIA's "no conflict" principle. Not all impacts can be anticipated given the complexity of the CVP system. It is expected that any impact is mitigated to achieve no net impact to other project purposes, regardless of it having been anticipated.	See 2j., 5h., 5i., 6d., 6v. above.
25j. Section IV.A. – A definition of banking is needed. Does this include "backing" (b)(2) water into CVP reservoirs? If so, how is this not a form of crediting, which was disallowed by court order? Does it include deliver of water to off stream storage? If not, how do "deliveries" discussed in Section IV.B. occur?	See 2k., 24e. above.
25k. A more precise set of principles need to be provided to explain how Interior will "arrange" to cover costs of banking/transfers/exchanges. Suggest language that reiterates non-reimbursable sources and that such "arrangements" will not have a redirected impact on other project purposes. Costs to other project purposes as a result of banking/transfers/exchanges may result from other circumstances than a change in storage, diversion and/or delivery.  Suggest: In the last sentence of Section IV.C. add ", or otherwise have an unmitigated adverse effect on," after "delivery of water for."	See 2k., 6r., 24e, above.
26. Bill Pauli, President, California Farm Bureau Federation	

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26a. Further work must be done to eliminate some of the ambiguities that continue to remain. These flaws will continue to diminish operational flexibility, may lead to a violation of the CVPIA, and allow implementation of Section 3406(b)(2) in an inequitable manner.	Interior disagrees that there are flaws in the Revised Decision that diminish operational flexibility, violate CVPIA or allow for implementation in an inequitable manner.
26b. Recognize and incorporate into the final decision principles that all of implementation of Section 3406(b)(2) in a balanced manner.	See 6h. above
26c. Recognize and incorporate principles that maximize the flexibility inherent in the authorization Section 3406(b)(2) uses. Modify the decision to allow for an equitable distribution of adverse impacts among all CVP contracts in order to comply with the letter and spirit of the law.	See 6h., 6j. above
26d. Explicitly recognized the 800,000 af limitation. The court had held that Interior has no discretion whether to annually provide more or less than 800,000 af of CVP yield for (b)(2) purposes, unless Interior makes certain findings under Section 3406(b)(2)(c). Interior should expressly state that Interior will not implement Section 3406(b)(2) in a manner that could cause it to exceed the 800,000 af limitation.	See 5m., 6i. above
26e. Change the accounting period for water and/or eliminate the 200,000 af up-front dedication of water for fishery purposes. Choosing an accounting period that may violate the law in 25% of all years is simply unacceptable.	See 2d., 5b., 5n., 8g. above.
26f. The accounting period actually creates a substantial risk that Interior would give more than 800,000 af for purposes that must be counted toward yield dedicated and managed under Section 3406(b)(2) without any real benefit to fish restoration. During the October through January period, Interior cannot accurately forecast CVP demands because the factors needed to forecast operations cannot be forecasted. The earliest operations forecast with the least amount of risk cannot occur until Feb 15. It is better policy for the (b)(2) accounting period to follow CVP operations period.	See 2d., 5b., 5m., 5n., 6i., 8g. above.
26g. The accounting period, when coupled with the up-front dedication of 200,000 af of water for fishery purposes, will likely cause more than 800,000 af of (b)(2) water to be dedicated annually. DWR analysis suggests that in about 25 percent of the years, Interior will dedicate more than 800,000 af if it dedicates 200,000 af of (b)(2) water in the October through January period.	See 5k., 5m., 6i., 8g. above.

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26h. Delete the section related to banking and transfers and develop the water banking and transfer/exchange on a separate schedule or make the principles of the water banking/transfer/exchange program more definitive and function as part of the final decision. The final should state that no banking/transfer/exchange will occur if the action could adversely impact other CVP water purposes.	See 6r., 6s. above.
26i. Adequately explain how implementation of (b)(2) will be coordinated with implementation of (b)(1).	See 2j., 5h., 5i., 6d., 6u., 6v., 17g., 21b., 22d. above.
26j. Interior only explains that the determinations on whether to modify CVP operations will be made on a case-by-case basis and with the concurrence of the Service and Reclamation – it doesn't explain how Interior will make the determination.	The Revised Decision provides the factors that Interior will consider in making any determination to reoperate the system.
26k. Failing to conduct analysis to determine that proposed re-operation does not present any conflicts prior to re-operating the CVPA would amount to offsetting or resetting of the accounting.	Interior has committed to making a determination of impacts to the fulfillment of the Secretary's remaining contractual obligations to provide CVP water for other authorized purposes before reoperation occurs.
26l. Interior should commit to, whenever possible, report and describe quantitatively the proposed (b)(1) action prior to re-operating the CVP.	See 5h., 5i. above.
26m. The proposed fish protection and habitat restoration actions are unsupported by the record. There exists inadequate scientific data to support the measures describe in Attachment 2 (reference SL&DMWA's October 31, 1997, comments).	Interior disagrees. See 6g. above.
<b>27. John C. Coburn, General Manager, State Water Contractors</b>	
27a. Fall upstream releases – Concern about (1) the process for determining whether or not these releases may be exported after meeting their upstream purpose, and (2) the possible impact that the targeted fall releases may have on ESA assurances provided through the EWA.	See 1b., 2f., 2g., 4i. above
27b. Export of upstream releases – unaware of scientific evidence suggesting that additional fall outflow would be beneficial to fish or the Bay-Delta ecosystem. SWC questions whether exports could be restricted in the context of Article X, Section 2 of CA's Constitution and general water law – and would expect the SWP to pump the releases, pursuant to the SWP's water	Interior disagrees. The California Water Code section 1707 provides for protection of instream flows and Interior will pursue such protection when the biological benefits justify that protection.



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rights, subject to whatever SWRCB limitations are then in effect.	
27c. Impact on ESA assurances – Concern about possible collateral impacts from such a policy upon the EWA – under certain circumstances the Service might attempt to use EWA in the spring or summer to replace the (b)(2) water it used for the discretionary action of providing upstream releases during the fall. EWA assets should not be used to make up for (b)(2) shortages if such reprioritization weakens EWA’s ability to meet its primary purpose of providing ESA commitments to the SWP/CVP.	<p>The ability to provide ESA commitments in a given year depends on hydrology, listed species abundance and distribution, export levels, and the amount of (b)(2) and EWA assets available.</p> <p>The EWA by itself is not sufficient for the CALFED agencies to give ESA assurances. The EWA’s ability to meet the primary purpose (i.e., to help provide conditions that lead to an ESA commitment) is directly linked to the amount of Tier 1(including (b)(2)), Tier 2 (EWA and ERP), and Tier 3 assets available.</p> <p>See 1b., 4a., 4d. above.</p>
27d. Vagueness – Concerned that the draft decision is written too broadly, and leaves a great deal of discretion to the Service and Reclamation to shape how the decision will be implemented. It could probably be interpreted in ways that differ by a hundred thousand acre-feet of water or more each year. A great deal more work needs to be done to define how the policy will be applied and accounted for.	Interior disagrees that the Revised Decision is written too broadly. The Revised Decision allows for appropriate flexibility in (b)(2) implementation.
27e. Consider the distinction between (b)(2) charges and (b)(1) re-operation. The policy could accommodate either a very limited or very expansive approach to (b)(1).	See 5h., 5i., 6v. above.
27f. Are there any criteria for the development of the D-1485 baseline? Until there are, (b)(2) accounting will always remain vulnerable to changes in policy.	See 2i., 5h. above.
<b>Individuals</b>	
<b>28. Felix Smith</b>	
28a. In recognized opinions of the DOI Solicitor in Washington, fish and wildlife purposes of the CVP was specially added by the 1954 CVP reauthorization.	Comments noted
28b. Brief review of history placed in a contemporary setting.	Comment noted.
28c. Support information for the protection of fish and wildlife.	Comment noted.
28d. Reclamation’s monitoring program to evaluate the effectiveness of its	Interior disagrees that current fisheries monitoring efforts in the

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mitigation and maintenance flows was a no-show on the American River prior to 2000, and in inadequate in its present form.	lower American River are inadequate. Several agencies work cooperatively on spawning escapement surveys, redd surveys, and juvenile assessment surveys (using rotary screw traps and snorkeling). In addition, Interior actively monitors and manages river temperatures in the summer and fall to reduce temperature impacts to salmonids. See 17c. above.
28e. Present American River flow regimen is day-to-day usually based on Delta conditions and export needs. Reclamation should provide evidence that such flows are meeting the Folsom projects mitigation requirements.	Reclamation operates Folsom and Nimbus Dams consistent with its water rights. Interior has been and will continue to focus attention to fishery needs in the lower American River.
28f. Water stored in Folsom from previous water year's runoff is really what is released during the October through December to meet the temperature and flow needs of Chinook salmon.	Comment noted.
28g. Water costs to meet the Delta WQCP should be a mitigation/conservation feature of the CVP. The water to meet the Delta WQCP should not be a (b)(2) cost, but a total project obligation/cost.	Interior disagrees. The statute specifies that one of the purposes of water dedicated and managed under (b)(2) is to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento San Joaquin Delta Estuary.
28h. Meeting the intent of CA law per Section 8 of the 1902 Reclamation Act includes Code Section 5937 and it also means meeting and supporting the principles of the public trust doctrine as developed by CA law.	Interior disagrees with this characterization. Section 8 of the 1902 Reclamation Act does not require Reclamation to meet the intent of California law, but rather requires conformance with State laws pertaining to control, appropriation, use or distribution of water, where not inconsistent with Federal law.
28i. The court ordered accounting is not based on or linked to CVP delivery capability. The (b)(2) accounting must be linked to CVP delivery capability for the given water year plus carryover storage.	The District Court placed limitations on Interior's accounting methodology. Interior has revised its methodology within those limitations.
28j. Comments regarding the operation of Folsom Dam and related facilities.	Comments noted.
29. Arther Unger	
29a. Object to any use of (b)(2) water for agriculture.	The 800,000 acre-feet is dedicated and managed for fish and wildlife needs. When (b)(2) water is released from CVP reservoirs to implement upstream fish actions, it is available for recapture and reuse in the Delta, including export south of the Delta, unless otherwise specified (see section II .B. 1. b. of

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	Revised Decision). See 16d. above.
29b. It is better to restrict water to California's alfalfa production by 800,000 af and consequently harm California's dairy industry than to further harm our fisheries.	Comment noted.
29c. Another way to decrease California's water use is to stop retiring the farmland that produces the most jobs with a given amount of water (we retire such land to build houses).	Comment noted.
29d. Restore polluted coasts and devote 800,000 af fish and wildlife habitat, we might again be able to have jobs in fish packing plants.	Comment noted.
29e. Even if each af of water provides more jobs in agriculture than in fisheries, California will attract more employers if we preserve the character of California by using these 800,000 af only for fish and wildlife habitat.	Comment noted.
30. Warren Linney	
30a. Against the draft policy because it would allow Reclamation to declare drought conditions an average of once every 3 years, instead of the once a decade average under the existing rules.	See 1a., 4f. above.
30b. Reclamation should be increasing flows in the summer months to restore the fish runs instead of sending the water to farmers at heavily subsidized rates.	Interior is dedicating and managing the 800,000 acre-feet for fish and wildlife purposes, both upstream and in the Delta. Increased instream flows are being provided primarily in the fall, winter and spring months when they provide the greatest fishery benefits. Interior has also implemented water temperature control operations in several CVP controlled streams to provide for improved survival of Chinook salmon and steelhead trout.
31. Delores Rodriguez	
31a. Please act responsibly to save water for the San Joaquin Delta. Declaring drought once every 3 years is too much.	See 1a., 4f. above.
31b. The formula for environmental releases has been in effect for 10 years and salmon have still not reached this desired numbers. More needs to be done to restore the fisheries and the Delta.	See 19i. above.